Filed 11/30/12 In re A.B. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| In re A.B., et al., Persons Coming Under the Juvenile Court Law. | B241045<br>(Los Angeles County<br>Super. Ct. No. CK48570) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>M.B.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of Los Angeles County, Anthony Trendacosta, Commissioner. Dismissed in part and reversed in part with directions.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Associate County Counsel, for Plaintiff and Respondent.

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In this appeal from an order terminating parental rights, M.B. (father) contends the juvenile court erred in failing to provide his Indian children with sibling visitation and contact in order to preserve their familial and tribal relationship and culture. He also argues the juvenile court erred when it found the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1912), only applied through his children's maternal Cherokee heritage, after social workers failed to investigate the father's purported Cherokee and Blackfeet ancestry or to notify the relevant tribes. Father lacks standing to challenge sibling visitation or placement orders, and we will dismiss that portion of the appeal. With regard to the ICWA, we conclude—and respondent concedes—that the court erred and that the matter must be remanded for the limited purpose of permitting the court to comply with the inquiry and notice provisions of the ICWA.

## FACTUAL AND PROCEDURAL BACKGROUND

In late September 2009, respondent Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300[1] petition on behalf of then 14-month-old A.B., and one-month-old AL.B. The girls' mother, Tanya B. (mother), had just been arrested for child endangerment and assault with a deadly weapon after trying to stab the children's father's girlfriend with a pair of scissors, and leaving the girls home alone during the incident. As amended, the sustained petition alleged serious physical harm and failure to protect. On September 23, 2009 the children were placed in the home of foster parent T.D., with whom they remain today.

Mother (who is not a party to this appeal) told a social worker there was ongoing domestic violence between father and herself, that both she and he were drug users, and said she had previously lost parental rights to a child as a result of domestic violence with a prior companion.[2] Father denied any drug use or domestic violence, but admitted having served jail time for burglary. Father sought custody of the children or,

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[1] Unless otherwise noted, all statutory references are to this code.

[2] DCFS learned that mother also failed to reunify with four children in Oklahoma.

alternatively wanted them placed with their paternal grandmother, with whom he lived or a paternal aunt. DCFS investigated both potential placements, but found neither appropriate.

Mother told DCFS she was registered in Oklahoma with the Cherokee Nation. Father originally claimed no Native American heritage, but later filed a form notifying the court he might have "Cherokee or Blackfeet" ancestry through the children's paternal great grandmother.

The children were detained on September 25, 2009. The court found that the ICWA likely applied through mother's Cherokee Nation heritage and might apply through father. The court ordered DCFS to talk to father's relatives regarding his possible Cherokee or Blackfeet ancestry, and ordered DCFS to notify the "appropriate tribe(s) (Cherokee Nation) or the BIA [Bureau of Indian Affairs]." Father was given monitored visitation, and reunification services, including anger management counseling, parenting education and drug testing.[3]

DCFS had sent ICWA notices to: the Cherokee Nation of Oklahoma, The United Keetoawah, the Eastern Band of Cherokee, the Secretary of the Interior, and the BIA. DCFS never investigated father's Indian ancestry, nor did it notify any tribe about the children's possible Native American heritage through their paternal relatives. The Cherokee Nation in Tahlequah, Oklahoma determined that A.B. and AL.B. were Indian children and intervened on October 9, 2009. The other two tribes did not respond to the notice.

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[3] Father never fully complied with his case plan. He did complete a parenting program. However, father failed fully to comply with the drug testing requirements, had numerous positive drug tests, was arrested for drug possession, and was reportedly manipulating drug tests to avoid being caught. He also failed to participate in anger management counseling, maintained sporadic visitation—at best—with the children, and remained homeless and unemployed throughout this proceeding. Father's reunification services were terminated in August 2011.

On October 22, 2009, the juvenile court found the ICWA applied to this action, recognized the Cherokee Nation as a party to the litigation and observed that the tribe had a right to assert its position regarding the children's placement with an Indian family. The court ordered an Interstate Compact on the Placement of Children (ICPC) with the children's maternal grandmother in Oklahoma. The Cherokee Nation filed a declaration stating it "agreed with out of home placement at this time," and recommended the court offer the parents reunification services, that the children be enrolled members of the tribe, and that DCFS continue with the ICPC for the maternal grandmother in Oklahoma.

During the next six months, mother, now pregnant with twins, moved to Oklahoma and lived with the children's maternal grandmother. That ended in June 2010 after she attacked the children's maternal grandmother with a screwdriver. The maternal grandmother withdrew herself from consideration for placement. Meanwhile, DCFS reported that the children remained comfortable, appeared to be happy and were doing well in T.D.'s care. T.D. expressed interest in adopting the girls in the event reunification failed.

On August 4, 2010 the Cherokee Nation filed an "Objection . . . to Placement Contrary to Federal Law." The tribe objected to A.B. and AL.B.'s placement in a non-Indian foster-care home, and requested placement in accordance with the ICWA's placement preferences. (25 U.S.C. § 1915.) In an accompanying letter to the court the tribe opined that it would be best to move the children from their non-ICWA-compliant placement, and "settle them into permanency." The tribe identified a relative in Arkansas whose home was approved as an adoptive home, and who would let the children visit their siblings in Oklahoma. Or, if that placement would not work, the tribe had also found tribally-approved foster homes which satisfied the ICWA placement requirements.

The Cherokee Nation participated telephonically in the six-month review hearing for A.B. and AL.B. on August 4, 2010. The juvenile court noted the tribe's objection to the children's placement in a non-Indian family foster home. DCFS was ordered to initiate an ICPC with the relative identified by the tribe in Arkansas (a maternal aunt),

and to assess a paternal aunt as a possible placement and report back at a contested hearing on August 24, 2010.

In August 2010 mother gave birth to twin girls, Destiny B. and Desiree B. (also father's children) in Los Angeles, but she and father evaded DCFS for a time. DCFS filed a section 300 petition on behalf of the twins on August 18, 2010, alleging serious physical harm and failure to protect. The court ordered the twins detained, and issued an arrest warrant for mother and protective custody warrants for the twins. The court also found that the ICWA likely applied through mother, ordered DCFS to "re-notice for these children."

On August 24, 2010 the Cherokee Nation informed the court it had concerns about administrative issues related to the ICPC for maternal relatives in Arkansas. The juvenile court ordered preparation of a supplemental report regarding the status of the ICPC, due September 29, 2010. Two weeks later, DCFS detained the twins after mother left them with a paternal aunt and never returned.

The Cherokee Nation appeared telephonically at the progress hearing on September 29, 2010 and was advised that the twins had been detained. The tribe requested that they be placed in an ICWA-compliant home or with their older siblings. The tribal representative noted: "we do have a tribal home out in California. Or we would also not be contesting the twins being placed with [A.B.] and [AL.B.]." The juvenile court ordered a supplemental report regarding placement in a tribal home, and noted that DCFS was already working to try to place the twins with A.B. and AL.B. On September 29, 2010, DCFS also reported that a Relative Home Study Evaluation needed to be completed for the ICPC in Arkansas and would not be complete until late November. The Cherokee Nation intervened on behalf of the twins on November 10, 2010.

In mid-November 2010, DCFS noted it was waiting for a list of ICWA-approved homes from the Cherokee Nation. Meanwhile, the twins were healthy and adjusting well in a local foster placement with the H. family.

In its report for the December 2010 review hearing, DCFS reported that T.D. remained committed to adopting A.B. and AL.B., and continued to meet the girls' medical, developmental and emotional needs. The Cherokee Nation continue to push DCFS to place the two girls in an Indian home. The Cherokee Nation advised the court at the hearing that, if father failed to reunify with A.B. and AL.B., the tribe opposed adoption by the girls' foster mother, because her home was not ICWA-compliant. The representative noted that the tribe was still "in the process of trying to locate a home and to place all four girls together in . . . an ICWA-compliant home in the area of L.A." and said the tribe and DCFS were "working on that." The court ordered a progress report to address the status of the ICPC in Arkansas, and the efforts of the Cherokee Nation and DCFS to find an ICWA-compliant home for all four children in the Los Angeles area. The court sustained the twins' petition, declared them dependents and gave father monitored visitation and reunification services. The court extended reunification services for father as to A.B. and AL.B., and set an 18-month review hearing for March 25, 2011, and a six-month review hearing for the twins for June 2, 2011.

In mid-March 2011, the foster family agency (FFA) that had placed A.B. and AL.B. with T.D. wrote to the court regarding its "long standing concerns over the plan to replace [A.B. and AL.B.] into a home that is compliant with the [ICWA]." The FFA asked that the juvenile court, attorneys and social worker reconsider any proposal to remove the girls from their current stable environment because "replacement at this time is clearly not in the best interests of the children," as they had been placed with T.D. since September 23, 2009. The girls were reportedly thriving, and they and T.D. had formed a strong bond with and attachment to one another, and the girls' needs continued to be addressed by T.D. who was committed to adoption if reunification failed.

On March 25, 2011, DCFS reported that the prospective caretakers in Arkansas had withdrawn themselves from consideration for placement. The Cherokee Nation identified a new couple in Arkansas whom the tribe said would take all the children. The tribe requested that a new ICPC be initiated because it was important that all four children be kept together. The children's attorney opined that it would be detrimental to

A.B. and AL.B. to remove them from T.D.'s care at this point, given their ages (they were just over two and one-half years, and 18 months old, respectively), and the length of time they had lived with their foster mother (about 18 months). The court responded that, "all prospective placements are on the table. Because in the final analysis the court has to make that determination based upon the best interests of the children and—but also consistent with the [ICWA]. They're not necessarily mutually exclusive." DCFS was ordered to follow up on all prospective placements and to start an ICPC for the new prospective home in Arkansas.

A contested 18-month review hearing for the older girls, and six-month review hearing for the twins was conducted on August 16, 2011. The Cherokee Nation appeared telephonically and cross-examined father. Father's reunification services were terminated, and the section 366.26 hearing was set for December 13, 2011. The tribe reiterated its belief that it was in the best interest of all the children to be together to foster the sibling bond, and noted it had found a placement for all four girls. The children's attorney advised the court that he and the DCFS social worker believed A.B. and AL.B. were differently situated than the twins: they were older, had been placed with T.D. for most of their lives, and their interest in remaining with their caretaker outweighed the ICWA's interest in maintaining sibling contact. The court ordered DCFS to "finish off or get the report on the ICPC," and ordered a full report for September 15, 2011, on all the placement options with input from the Cherokee Nation, DCFS and counsel for the children and the parents.

On September 15, 2011, DCFS reported that the two older girls remained with T.D. and the twins with the H.'s. All four children were adoptable, and adoption was the proposed permanent plan. T.D. was committed to adopting A.B. and AL.B. DCFS believed that plan was in the older girls' best interests, since they had been thriving in T.D.'s care for over two years. DCFS was still waiting for information regarding the ICPC with the family in Arkansas, but opposed placing A.B. and AL.B. in Arkansas because of the strong bond they had developed with T.D. A maternal aunt in Arkansas was interested in adopting two of the children, but did not believe she could care for all

four. DCFS recommended that an expedited ICPC be ordered with the maternal aunt for placement of the twins but, if the ICPC was not approved, the agency recommended that the twins be placed locally so they could maintain sibling contact with A.B. and AL.B.

At the progress hearing, the Cherokee Nation reiterated its position that all four children should be placed together. The tribal representative noted that two ICPC's were currently pending regarding families in Arkansas: the "D" family could adopt all four girls, and the maternal aunt could adopt two. The court observed that it had "a lot of balancing to do specifically within the [ICWA] and case law . . . ," and would issue a written decision on the placement issues. The court ordered an expedited ICPC with the maternal aunt in Arkansas. The ICPC with the "D" family in Arkansas was approved for placement of all four children on September 20, 2011. The juvenile court "struggl[ed]" to make a reasoned placement decision through late September and mid-October 2011.

On October 20, 2011, father filed a section 388 petition, requesting that the children be returned to him; it was denied.

The juvenile court filed a written decision regarding placement of the children on October 24, 2011. The decision conveyed the history of the active efforts made by DCFS and the Cherokee Nation to find an appropriate Indian placement for all four children, the current status of those efforts and the limited situations in which a juvenile court could select a non-Indian home. The court's decision also observed that the siblings were not similarly situated, had not been placed together, were detained at different times, had not been found to be a sibling set and that there was little evidence of bonding among them. The court ordered an expedited ICPC with the maternal aunt for the 14-month-old twins. In the event that aunt was unable to adopt, the twins would be placed with the "D" family in Arkansas. But, as to A.B. and AL.B., the court found good cause to deviate from the statutory preferences, leaving them with T.D., with whom they had lived for two years, had strongly bonded with and to whom they looked as a parent. As to these older girls, the court found it was not in their best interest to remove them from T.D.'s home.

DCFS filed a section 366.26 report on December 13, 2011. A.B. and AL.B. continued to thrive in T.D.'s care, and were emotionally happy and stable.[4] The twins were doing well in their foster placement, and the maternal aunt in Arkansas remained committed to adopting them. The Cherokee Nation remained committed to a plan of adoption for all four children. The tribe "strenuous[ly] object[ed]" to the plan to leave A.B. and AL.B. in T.D.'s non-ICWA compliant home. The tribe did not object to the plan to place the twins with the maternal aunt in Arkansas once the ICPC was approved. Father requested the matter be set for a contested section 366.26 hearing. He did not object to or comment on the Cherokee Nation's declaration or the children's placement options.

A contested section 366.26 hearing began on February 12, 2012. DCFS reported that the ICPC for the aunt in Arkansas had been approved. T.D.'s adoptive home study was not yet complete. The juvenile court ordered the twins transported to the maternal aunt's home in Arkansas.

On April 12, 2012, the Cherokee Nation recommended termination of parental rights, but continued to state the tribe's disagreement with the children's placement in a non-Indian home. Father did not attend that hearing. His attorney asked the juvenile court to make a beneficial relationship finding (§ 366.26, subd. (c)(1)(B)(i)) for father, and stated that a plan of legal guardianship might afford "time to possibly have this Indian family united again and not have the kids separated." The court found "by clear and convincing evidence" that the children are adoptable, found no exception applicable and terminated parental rights. This appeal followed.

**DISCUSSION**

Although father appeals from the order terminating his parental rights, he raises no substantive argument regarding the merits of that order. Rather, his only contentions are

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[4] T.D.'s home study was deferred for several months or health reasons not relevant here.

that the juvenile court erred when it found that the ICWA applied only through the children's mother's lineage, and erred further when it failed to provide his Indian children with sibling visitation and contact. As DCFS concedes, father's first assertion is correct, and a limited reversal is in order. As to the latter issue, however, father lacks standing to raise the issue of sibling visitation. Accordingly, we will grant DCFS's motion for partial dismissal of the appeal.

*1. The juvenile court made an erroneous finding regarding ICWA notice*

The law is well established that only a suggestion of Indian ancestry is sufficient to trigger the notice requirement under the ICWA. (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) The juvenile court and DCFS have an "affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child . . . ." (§ 224.3, subd. (a).) If the court or DCFS "knows or has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child . . . by interviewing the parents . . . and extended family members to gather the information required . . . , contacting the [BIA] . . . [,] the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (§ 224.3, sub. (c); *In re A.B.* (2008) 164 Cal.App.4th 832, 838.) A primary purpose for giving notice to a tribe is to enable it to determine whether the child involved in the proceedings is an Indian child. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.) The ICWA notice requirements are strictly construed. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174.) A notice with incomplete or incorrect information prevents a tribe from conducting a meaningful search to determine a child's eligibility for membership. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.)

Thus, it "is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) The notice must provide enough information to be meaningful. (*Ibid.*) Accordingly, it "must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in

which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.]" (*Ibid.*; *In re D.T.*, *supra*, 113 Cal.App.4th at p. 1454.)

Here, mother told DCFS she was a registered member of the Cherokee Nation. Father too informed the court on September 25, 2009 that he had "Cherokee or Blackfeet" ancestry through his deceased paternal grandmother. The court observed that the ICWA likely applied through mother's Cherokee heritage, and ordered DCFS to make inquiries of the children's paternal relatives and notify the appropriate tribes. There is no indication that, in the course of two and one-half years, DCFS made any effort to investigate the children's Indian ancestry with their paternal relatives, notwithstanding the fact that the children's paternal grandmother, aunt and uncle attended various hearings in this case, a paternal aunt was evaluated by DCFS as a possible placement, and paternal relatives visited the twins in foster care.

DCFS acknowledges that it never notified the Blackfeet tribe, and that the notices it sent did not designate the Blackfeet as a possible tribal affiliation. DCFS also acknowledges that the notices it sent to the Cherokee Nation, BIA and Secretary if the Interior contained incomplete information regarding the children's paternal relatives, and may be missing additional information. The notices have incomplete information regarding the children's paternal great grandmother (missing addresses, birth date and place), paternal grandfather (current and former addresses). Further inquiry is required of other members of father's family to determine whether more information about the children's paternal Indian heritage is available. If no further information is available, we agree with DCFS that the initial notice was sufficient as to the Cherokee bands.[5] If,

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[5] If no additional information is obtained regarding the childrens' paternal relatives, there is no need to renotice for the twins whose parentage and ancestry is the same as A.B.'s and AL.B.'s. Any error in failing to notify the tribes after their birth would be harmless. (See *In re E.W.* (2009) 170 Cal.App.4th 396, 400 [improper notice

however, new information is obtained regarding father's Indian heritage, that information must be included in new notices to the Cherokee bands, including the two that did not respond or intervene in this case. Further inquiry is also necessary to ascertain if, as he claims, father has Blackfeet heritage on his side of the family. If so, DCFS must sent appropriate notices to that tribe.

A limited remand and conditional reversal is appropriate with directions to reinstate the order terminating parental rights if, after additional inquiry, no further information is obtained from father's relatives regarding the children's Cherokee heritage and there is no Blackfeet heritage. If the court does determine that information regarding the children's Cherokee heritage is missing, DCFS must re-notice all the Cherokee tribes, including the two bands that did not respond to the prior notice. If those tribes do not indicate that the children are Indian children, the order terminating parental rights is to be reinstated. If information is obtained indicating the children have Blackfeet heritage and notices are sent to that tribe, the order terminating parental rights shall be reinstated if the Blackfeet tribe does not indicate the children are Indian children.[6] (*In re Gabriel G.*, *supra*, 206 Cal.App.4th at p. 1168; *In re Marinna J.* (2001) 90 Cal.App.4th 731, 740.)

*2. Father lacks standing to challenge the absence of sibling contact or visitation*

Father argues that the juvenile court "failed to provide these Indian children with any sibling visitation and contact to preserve their familial and tribal relationship and culture." He contends that, by failing to order sibling visitation and contact, the juvenile court deviated from the ICWA's placement preferences set forth at section 361.31.

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may be deemed harmless where notice listed only one of two possibly Indian children who had the same parents]; *In re Cheyanne F.*, *supra*, 164 Cal.App.4th at pp. 577–578 [harmless error analysis applies if non-compliant ICWA notice contained all known information about Indian relatives and tribe received notice].)

[6] In the event the children are determined to be members of or eligible for membership in more than one tribe, the juvenile court shall proceed in accordance with section 224.1, and relevant provisions of state and federal law.

Father's argument is not cognizable on appeal. "A parent cannot raise issues on appeal which do not affect his or her own rights. [Citation.] That is, a parent's interest is in reunification. The interest of siblings . . . in their relationship with [each other] is separate from that of the parent." (*In re Devin M*. (1997) 58 Cal.App.4th 1538, 1541 (*Devin M*.).) To that end, courts have long held that parents lack standing to challenge sibling visitation. (See *In re Daniel H*. (2002) 99 Cal.App.4th 804, 809; *In re Frank L*. (2000) 81 Cal.App.4th 700, 703; *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 425; *Devin M., supra,* 58 Cal.App.4th at p. 1541; *In re Nachelle S*. (1996) 41 Cal.App.4th 1557, 1560.)[7] The same rule applies to a parent seeking to challenge placement preferences. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035 [unless placement affects a parent's interest in reunification, parent lacks standing to appeal a relative placement preference].) To obtain review of an order in a dependency action, a parent must establish that he or she is an "'party aggrieved.'" (*In re Carissa G*. (1999) 76 Cal.App.4th 731, 734; *Devin M., supra,* 58 Ca1.App.4th at p. 1541 [parent may not raise issues in dependency appeal that do not affect his own rights].) Moreover, an appellant may not argue on appeal errors that affect only another party who has not appealed. (*In re Vanessa Z*. (1994) 23 Cal.App.4th 258, 261.) "Standing to appeal is jurisdictional." (*In re Frank L., supra,* 81 Cal.App.4th at p. 703.)

This appeal is from a termination of parental rights. None of the exceptions to termination of parental rights which might salvage this appeal, however, include maintaining a sibling relationship or contact. (§ 366.26, subd. (c)(1)(B)(v).) Father does

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[7] We recognize that these cases were decided before the Legislature enacted section 366.26, subdivision (c)(1)(B)(v), under which sibling relationships may now provide an exception to adoption. As such, those relationships may directly impact a parent's interest in reunification. Here, however, father does not assert any interest in reunification, and raises the issue of the absence of sibling visitation after the order terminating parental rights. Thus, father lacks standing to raise the issue of the siblings' right to visitation, contact or placement preferences; the children's interest in those matters do not affect father.

not argue that the order terminating his parental rights was erroneous, or that he retains any interest in reunifying with his children.

Father's two eldest daughters have always lived together, and they remain together in a close familial relationship with T.D. The young twins also have always been together, and they too share a placement. The two sets of siblings have never known one another and have never had a sibling relationship to speak of. Father cites no authority, and we are aware of none, that requires DCFS or the court to act to develop a relationship between siblings that did not exist when the dependency petitions were filed. In any case, whatever interest the children may have in maintaining (or developing) a relationship with each other, whether or not they live together, is separate from any interest father once had in reunification. The interest of a dependent child's siblings or other relatives in their relationship with the dependent child are independent of the interests of a parent. (*In re Devin M., supra*, 58 Ca1.App.4th at p. 1541.) Accordingly, parents lack standing to raise issues regarding a dependent child's right to visit or maintain contact with his or her siblings. (*In re Nachelle S., supra*, 41 Ca1.App.4th at p. 1561.)

*Daniel H., supra*, 99 Cal.App.4th 804 is directly on point. There the court found that the children's interests in maintaining a relationship with each other was separate from the mother's interest in reunification, and she lacked standing to litigate sibling visitation issues. (*Id*. at p. 809.) A comparable challenge was rejected in *In re Cliffton B., supra*, 81 Cal.App.4th 415, in which the court found a parent, whose parental rights had been terminated, was not a party aggrieved by the absence of a sibling visitation order; the parent's interest was in reunification, not sibling visits. (*Id*. at p. 425; see also *Nachelle S., supra*, 41 Cal.App.4th at p. 1560 [same].)

There is nothing unique about this case. Father once had an interest in reunifying with his children. The time for reunification has past, and father does not complain that the juvenile court erred by terminating his parental rights. Father is not an aggrieved party with respect to the issue of sibling visitation and lacks standing to challenge sibling

contacts or placement preferences. Accordingly, we will grant DCFS's motion and dismiss that portion (Section I) of father's appeal.[8]

**DISPOSITION**

Department of Children and Family Services's motion seeking dismissal of that portion of the appeal challenging the juvenile court's sibling visitation and contact orders is granted.

The order terminating parental rights is conditionally reversed, and a limited remand is hereby ordered, as follows:

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[8] Even if father had standing to challenge the ICWA placement preferences, we would find no error for the reasons stated in the juvenile court's thoughtful placement order. With respect to the twins, they are placed with a maternal aunt in Arkansas. Such a relative placement is among the primary choices under the ICWA (§ 361.31, subd. (c)), and this is one of which the Cherokee Nation approves.

As for AL.B. and A.B., active efforts were made to find ICWA-compliant placements for them from the time they were placed with T.D. in September 2009. Those efforts did not pan out before the twins were born, when active efforts shifted to the even more difficult task of finding an ICWA-compliant placement willing to accept all four children. By the time the juvenile court made its placement decision, AL.B. and A.B. had lived with T.D. for over two years, and had forged a strong familial bond. The children's attorney and the foster agency that placed the girls with T.D. agreed it would be detrimental to them to remove them from her care.

Section 361.31, subdivision (h) permits the court to deviate from ICWA placement preferences for good cause, including the "extraordinary . . . emotional needs of the child as established by testimony of a qualified expert witness; [and] . . . [t]he unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria." (Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584, 67594; § 361.31, subd. (h).) We review a court's good cause determination to bypass ICWA's placement preferences for substantial evidence. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 644–646.) The trial court found it would be detrimental to and not in the best interest of AL.B. and A.B. to remove them from their caretaker, and found good cause to deviate from the ICWA placement preferences. Neither the Cherokee Nation nor the children's attorneys appealed that decision, and father has not shown there is no substantial evidence to support that reasoned exercise of discretion.

The court is directed to order Department of Children and Family Services to obtain complete information about the Indian ancestry of paternal relatives and to provide corrected Indian Child Welfare Act notices to the relevant tribes. If the juvenile court finds that there has been substantial compliance with the notice requirements of Indian Child Welfare Act, and Department of Children and Family Services's additional inquiry reveals no new information from father's relatives regarding the children's Cherokee heritage and no Blackfeet heritage, the court shall reinstate the order terminating parental rights. If the court determines that information regarding the children's Cherokee heritage is missing, but that the children have no Blackfeet heritage, Department of Children and Family Services must renotice all the Cherokee tribes, including the two Cherokee bands that were previously notified but did not respond to the prior notice. If information is obtained indicating the children have Blackfeet heritage, notice must be sent to that tribe. The order terminating parental rights shall be reinstated if neither the two Cherokee tribes previously notified nor the Blackfeet tribe indicates the children are members of or eligible for membership. If, after new and proper notice is received, one or more these tribes indicates that the children are members of or eligible for membership in that tribe, the juvenile court is ordered to conduct a new review hearing in conformance with the Indian Child Welfare Act and federal and state law.

In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.